

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

IN RE:

Louis M. Lesniak

Wells Fargo Bank, N.A.,

VS.

Louis M. Lesniak

CHAPTER 7
CASE NO. 09-10206-ANV

MOTION FOR RELIEF FROM STAY AND MEMORANDUM IN SUPPORT THEREOF

To the Honorable Arthur N. Votolato:

Wells Fargo Bank, N.A., your moving party in the within Motion, respectfully represents:

1. The movant has a mailing address of 3476 Stateview Blvd, Ft. Mill, SC 29715.
2. The debtor, Louis M. Lesniak, has a mailing address of 7 Dion Avenue, Coventry, RI 02816.
3. On January 22, 2009, the debtor filed a petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Rhode Island.
4. The movant is the holder of a first mortgage on real estate in the original amount of \$154,000.00 given by Louis M. Lesniak to Providence Postal Federal Credit Union on or about March 27, 2006. Said mortgage is recorded with the Coventry Land Records at Book 1717, Page 154 and covers the premises located at 7 Dion Avenue, Coventry, RI 02816.
5. Said mortgage secures a note given by Louis M. Lesniak to Providence Postal Federal Credit Union in the original amount of \$154,000.00.
6. As of January 23, 2009, approximately \$160,203.88 in principal, interest, late fees and other charges was due with regard to the note and mortgage. Additionally, reasonable attorney's fees and costs have accrued as a result of this motion.

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7. There are the following encumbrances on the property:

<u>Name of Creditor</u>	<u>Type of Lien</u>	<u>Amount Owed</u>
Wells Fargo Bank, N.A.	First Mortgage	\$160,203.88
Bank of America, NA	Jr. Mortgage	\$130,000.00
State of Rhode Island Division of Taxation	Tax Lien	Unknown
Total Secured Encumbrances:		\$290,203.88

8. According to the Town of Coventry Assessor's Office, the fair market value of the subject property is \$177,400.00.

9. The note and mortgage are in default for the July 1, 2008 payment and all payments thereafter, plus reasonable attorney's fees and costs and other charges incurred by the movant.

10. The movant seeks relief from stay as a secured creditor to enforce its rights under its loan documents and applicable law. In support thereof, the movant states that it is entitled to relief:

I. Pursuant to 11 U.S.C. 362 (d)(1) for cause on the basis that the debtor is in default on said contractual obligations, the primary purpose of a Chapter 7 proceeding is to liquidate the assets of the debtor, there is no equity and the trustee has no motivation to liquidate the subject property;

II. Pursuant to 11 U.S.C. 362 (d)(2) on the basis that there is no equity in the subject property and, there being no reorganization in prospect, the property is not necessary for effective reorganization.

WHEREFORE, the movant prays that it, and its successors and/or assigns, be granted relief from the automatic stay for the purpose of: (i) exercising its rights under its agreements with the debtor and under applicable law, including, without limitation, taking possession of the

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mortgaged premises and/or foreclosing or accepting a deed in lieu of foreclosure of its mortgage on said premises, and bringing such actions, including, without limitation, eviction proceedings, as are permissible by law; (ii) the Court waive the provisions of F.R.B.P. 4001 (a)(3); and (iii) the Court order such other and further relief as may be just and proper.

Respectfully submitted,

Wells Fargo Bank, N.A.,
By its Attorney

/s/ Elizabeth A. Lonardo
Elizabeth A Lonardo, Esquire
RI #7714
HARMON LAW OFFICES, P.C.
P.O. Box 610345
Newton Highlands, MA 02461-0345
781-292-3900

February 10, 2009

Within ten (10) days after service as evidenced by the certification and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Bankruptcy Court Clerk's Office, 380 Westminster Mall, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed within the time allowed herein, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

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CERTIFICATE OF SERVICE

I, Elizabeth A. Lonardo, Esquire, state that on February 10, 2009, I electronically filed the foregoing Motion for Relief and Proposed Order with the United States Bankruptcy Court for the District of Rhode Island using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

Sandra Nicholls, Esquire, U.S. Trustee US Trustee
Andrew S. Richardson, Esquire, Chapter 7 Trustee
Russell D. Raskin, Esquire for the Debtor

I certify that I have mailed by first class mail, postage prepaid the documents electronically filed with the Court on the following non CM/ECF participants:

/s/ Elizabeth A. Lonardo
Elizabeth A. Lonardo, Esquire
RI# 7714

Louis M. Lesniak
7 Dion Avenue
Coventry, RI 02816

Bank of America - NA
100 North Tryon Street
Charlotte, NC 28255

State of Rhode Island
Division of Taxation
One Capitol Hill
Providence, RI 02908

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